PRIME VIEW SDN BHD

v.

LAW MENG

HIGH COURT MALAYA, PENANG
RK NATHAN J
[SUIT NO: 22-411-2001]
22 MAY 2002

LAND LAW: *Tenancy - Vacant possession - Defendant's tenancy with plaintiff's predecessor-in-title of premises - Whether plaintiff entitled to vacant possession - Whether defendant's failure to endorse interest on register document title of land entitled plaintiff to vacant possession - Whether defendant could rely on equity - Whether plaintiff's title to land indefeasible*

WORDS AND PHRASES: *'tenancy exempt from registration' - Interpretation - National Land Code, ss. 213, 316*

The plaintiff claimed, *inter alia*, for vacant possession of premises occupied by the defendant which was erected on a piece of land owned by the plaintiff. The defendant relied on equity and contended that the previous landowner (the plaintiff's predecessor-in-title) had consented to the assignment of the said premises from the previous tenant to the defendant. The plaintiff contended that the defendant failed and/or neglected to secure an endorsement of his interest on the register document of title of the said land as required by s. 316(1) of the National Land Code ('NLC'). Further, the plaintiff relied on s. 213(3)(a) and (b) of the NLC. The plaintiff also contended that the said premises being constructed with bricks and planks was permanently affixed to the said land. As such, pursuant to s. 5 of the NLC the said premises became part of the said land and the ownership therefore vested with the plaintiff.

Held:

[1] In *Verama v. Amarugam & Anor*, it was held that land laws were governed by the NLC which did not allow the law to be tempered by equity. Also, under the NLC the title of the registered proprietor is indefeasible unless it is obtained by fraud, mistake, undue influence, etc. In the present case, there was no allegation of fraud, mistake or undue influence to defeat the plaintiff of his right to proprietorship. (pp 458 h & 459 a-e)

[2] The defendant's contention that the plaintiff's predecessor-in-title had consented to the assignment of the said premises from the previous tenant to the defendant did not add weight to the defendant's case. In *Than Kok Leng v. Low Kim Hai*, the court applied the provision of s. 213(3) to be read together with s. 316(1) of the NLC and since there was no endorsement of the tenant's claim therein in the register document of title to the land, the oral agreement in relation to the tenancy between the said tenant and the registered proprietor's predecessor-in-title was not binding on the registered proprietor under s. 213(3) of the NLC. (pp 459 f-i & 460 a-c)

[3] The National Land Code is a complete and comprehensive code of law governing the tenure of land in Malaysia and the incidents of it as well as other important matters affecting land. There is no room for the importation of any rules of English Law in that field except in so far as the Code itself may expressly provide (The Privy Council in *United Malayan Banking Corporation Bhd & Anor v. Pemungut Hasil Tanah Kota Tinggi*). This court agreed and accepted this proposition of the law that even if the plaintiff had actual or constructive notice of (i) the sale of the said premises from the previous tenant to the defendant; and (ii) of the consent given by the plaintiff's predecessor-in-title, the binding provision in s. 316(1) of the NLC was applicable. In the present case, the defendant had every right to have sought the endorsement of his claim on the register document of title to the said land. (pp 460 g-h & 461 a)

[4] In *Hotel Ambassador (M) Sdn Bhd v. Sea Power (M) Sdn Bhd*, the Supreme Court stated that s. 267(2) of the NLC provides that notwithstanding that the tenancy was granted with the consent in writing of the chargee of the property, no tenancy exempt from registration granted by the chargor after the date of registration of the charge shall be binding on the purchaser unless prior to the date of registration of the certificate of sale, the tenancy had become protected by an endorsement on the register document of title. The highest court of the land has confirmed the implication of s. 213(1)(a) of the NLC which defines a "tenancy exempt from registration". (p 461 c-h)

[5] The Federal Court in *Mok Deng Chee v. Yap See Hoi & Ors* relied on various English decisions and incorporated the English law of equitable estoppel by holding that because the landowner by his conduct raised an expectation of his tenant that the latter would be allowed to stay on, thereby inducing him to spend money in respect of the tenancy, the said landlord ought to be prevented from taking any action contrary to that expectation. Since the said case did not consider the very relevant provision of s. 6 of the Civil Law Act 1956 which excludes the application

of equitable principles to land matters, the decision therein will not be followed. Further, the said case was decided much earlier to the above cases and in none of those cases was it referred to. (p 462 a-c)

[6] Where the issue raised is solely a question of law or where the facts are clear and undisputed, the court should exercise its duty under O. 14 of the Rules of the High Court 1980. Since the defendant had agreed with all the facts as put forward by the plaintiff and since no facts were in dispute, the only issues the court had to decide were issues of law relating to the applicability of ss. 213 and 316 of the NLC. Therefore, O. 14 of the said Rules was applicable. (p 462 d-e)

[Plaintiff's application in terms of (a), (b) and (e) allowed.]

Case(s) referred to:

Bank Negara Malaysia v. Mohamed Ismail & Ors [1992] 1 CLJ 627; [1992] 1 CLJ (Rep) 14 ***(refd)***

Hotel Ambassador (M) Sdn Bhd v. Sea Power (M) Sdn Bhd [1991] 1 CLJ 656; [1991] 1 CLJ (Rep) 174 ***(foll)***

Mok Deng Chee v. Yap See Hoi & Ors [1981] CLJ 124; [1981] CLJ (Rep) 69 ***(not foll)***

Than Kok Leong v. Low Kim Hai [1983] 1 CLJ 95; [1983] CLJ (Rep) 907 ***(foll)***

United Malayan Banking Corporation Bhd & Anor v. Pemungut Hasil Tanah, Kota Tinggi [1984] 2 CLJ 146; [1984] 1 CLJ (Rep) 51 ***(foll)***

Verama v. Amarugam & Anor [1982] 1 MLJ 107 ***(foll)***

Legislation referred to:

Civil Law Act 1956, s. 6

National Land Code, ss. 5, 206, 207, 212, 213(3)(a), (b), 223, 267(2), 316(1)

Rules of the High Court 1980, O. 14, O. 89

For the plaintiff - R Rajasingam (Mohd Hussain Ibrahim); M/s Mohd Hussain Ibrahim & Co

For the defendant - Thayalan Muniandy; M/s Thayalan & Assoc

Reported by Usha Thiagarajah

JUDGMENT

RK Nathan J:

Facts

The plaintiff is the registered proprietor of all that piece of land known as lot No. 3562 Mukim 18, North East District, Penang (the said land) held under Grant (1st Grade) No. 201. The plaintiff became the registered proprietor of the said land as of 11 June 2001. The defendant who is the ground tenant of the plaintiff's predecessor-in-title, purchased premises No. 655-1, Jalan Mount

Erskine, 11200 Penang (the said premises) which stands erected on the said land, at a purchase price of RM38,000. The defendant purchased the said premises from the former ground tenant of the plaintiff's predecessor-in-title by way of a deed of assignment dated 7 June 1991.

The Plaintiff's Case

The plaintiff contended that the defendant's monthly ground tenancy with the plaintiff's predecessor-in-title is not binding on the plaintiff because the defendant had failed and/or neglected to secure an endorsement of his interest on the register document of title of the said land as required by s. 316(1) of the National Land Code (the NLC) prior to the registration of the plaintiff as the registered proprietor of the said land. The plaintiff further relied on s. 213(3)(a) and (b) of the NLC. The plaintiff also contended that the said premises being constructed with bricks and planks, and by the nature of its construction, is permanently affixed to the said land and that therefore pursuant to the definition of land in s. 5 of the NLC, the said premises became part of the said land and the ownership therefore vested with the plaintiff. The defendant having failed to comply with the plaintiff's notice to quit and deliver vacant possession of the said premises, the plaintiff commenced this action. The plaintiff contended that having acquired the said land for valuable consideration with an intention of developing the said land into a housing estate, the plaintiff had submitted the development plans to the Majlis Perbandaran, Pulau Pinang and that this is pending approval. The plaintiff therefore required vacant possession of the said land for the intended development. The plaintiff then sought the following orders:

(a) a declaration that premises No. 655-I, Jalan Mount Erskine, 11200 Penang (the said premises) erected on the land known as Lot 3562, Mukim 18, North East District, Penang held under Grant (1st Grade) No. 201 (the said land) forms part of the said land and as such is the property of the plaintiff.

(b) An order that the defendant or any person claiming through or under him do deliver peaceable vacant possession of the said premises and the said land to the plaintiff within fourteen (14) days from the date of the order herein;

(c) Damages to be assessed and/or mesne profits.

(d) Such further or other reliefs as the Honourable Court may deem fit and expedient and

(e) Costs.

The plaintiff thus took out an application under O. 14 of the Rules of the High Court 1980 (encl. 12) and sought orders for the same prayers.

Case For The Defendant

The defendant relied on equity and contended that the previous landowner (the predecessor-in-title) had consented to the assignment of the said premises from the previous ground tenant to the present ground tenant, the defendant herein.

Findings Of The Court

To consider the various issues raised it is necessary to reproduce the relevant section of the NLC referred to by the parties.

The relevant provisions of s. 316 read as follows:

(1) Any person or body claiming to be entitled to the benefit of a tenancy exempt from registration may, for the purpose of protecting his rights thereunder against subsequent dealings, as mentioned in s. 213, apply to the registrar under this section for the endorsement of his claim on the register document of title to the land thereby affected.

(2) Any such application:

(a) where the tenancy claimed relates to a part only of the land comprised in the title in question, shall be accompanied by a plan and description sufficient to enable the part to be accurately identified;

(b) where, by virtue of s. 226, the grant of the tenancy requires the consent in writing of any chargee, shall be accompanied by that consent.

(3) –

The relevant provisions of s. 213 read as follows:

(1) In this Act "tenancy exempt from registration" means:

(a) any tenancy or sub-tenancy for a term not exceeding three years granted pursuant to s. 223; and

(b) any tenancy or sub-tenancy for a term not exceeding one year granted pursuant to the provisions of any previous land law.

(2) As provided in sub-s. (2) of s. 206, the provisions of sub-s. (1) of that section shall not apply to the creation of, or dealings affecting, tenancies exempt from registration; and accordingly:

(a) any such transaction shall be valid whether effected in writing or by word of mouth only;

(b) where any such transaction is effected in writing, the instrument in question need not comply with the requirements of ss. 207 to 212, and shall neither require, nor be capable of, registration under this Act.

(3) Notwithstanding the provisions of sub-s. (2), no tenancy exempt from registration granted after the commencement of this Act shall be binding on:

(a) any person or body to whom the grantor subsequently transfers the reversion expectant thereon, or to whom he subsequently grants any lease, sub-lease, tenancy or charge, or in whose favour any lien over that reversion is subsequently created; or

(b) any person or body claiming through or under such a person or body,

unless, prior to the date on which the dealing referred to in para. (a) takes effect, the tenancy has become protected by an endorsement on the register document of title to the land pursuant to Chapter 7 of Part Eighteen.

(4) –

(5) –

The relevant provision of the interpretation s. 5 reads as follows:

"land" includes:

(a) –

(b) –

(c) –

(d) all things attached to the earth or permanently fastened to any thing attached to the earth, whether on or below the surface;

and

(e) –

Verama v. Amarugam & Anor [1982] 1 MLJ 107 was a case almost similar on facts to the one before me. The plaintiff claimed against the defendants as administrators of one Gopal and in their respective personal capacities for premises No. 3141, 3142 and 1600 erected on the plaintiff's land. The plaintiff

was the registered proprietor of the said land. Like in the case before me the defendants too relied on the doctrine of equitable estoppel. They contended that the plaintiff had permitted the said houses to be built and that the plaintiff had agreed that (1) Gopal (deceased) and his heirs and beneficiaries would be able to occupy and live in the said premises No. 1600 as long as they wished and (2) that Lingam s/o Gopal would be able to live and rent out buildings Nos. 3141 and 3142 as long as he wished. In allowing the plaintiff's claim the court held that the land laws are governed by the NLC which does not allow the law to be tempered by equity. The court further held that the defendants were at the most gratuitous licensees and in the case of the first defendant the licence granted to her household, died with her husband. House No. 1600 did not form part of the estate of Gopal, for being an immovable, it was part of the plaintiff's land. It was the view of the court that to hold otherwise would be in direct conflict with the principles of registered proprietorship of land under the NLC. The court further held that the defendants as administrator of the estate of Gopal had no interest whatsoever in houses Nos. 3141 and 3142 which, as claimed by the defendants themselves, were built by one Lingam. The court finally held that under the provisions of the NLC the title of the registered proprietor is indefeasible unless it is obtained by fraud, mistake, undue influence etc. The court held that since there was no such allegation, the defendants could not resist the declaration prayed for. Similarly, in the case before me, there is also no allegation of fraud or mistake or undue influence to defeat the present plaintiff of his right to proprietorship.

The defendant's contention that the plaintiff's predecessor-in-title had consented to the assignment of the said premises from the previous tenant to the present defendant, does not add weight to the defendant's case. In fact the present Chief Justice when he was sitting as a Judicial Commissioner had occasion to consider this very same question in *Than Kok Leong v. Low Kim Hai* [1983] 1 CLJ 95; [1983] CLJ (Rep) 907.

In that case the plaintiff was a registered proprietor of certain premises in Kuala Lumpur. He purchased the said premises from one Patricia Perera. At the time of the purchase, the defendant was a tenant paying a rental of $950.00 per month. On 26 January 1978 the plaintiff as registered proprietor gave notice to quit for vacant possession to the defendant, the said notice expiring on 28 February 1978. Despite such notice, the defendant refused to vacate. The defendant contended that his tenancy was a lease pursuant to an oral agreement made between him and the former landlord who had granted him an oral lease for a period of three years commencing 1 January 1974 with an option to renew for the same period of three years to be exercised by him.

The defendant filed a counterclaim against the plaintiff claiming specific performance of the said oral agreement and an injunction to restrain the plaintiff from acting in any manner contrary to the purported lease and for damages. The court found on a balance of probabilities that there was an oral agreement for lease for a period of three years with an option to renew and that the said oral agreement came under s. 213 of the NLC. Since it fell under s. 213 of the NLC his Lordship applied the provision of s. 213(3) to be read together with 316(1) and since there was no endorsement of the defendant's claim in the register document of title to the land affected, his Lordship held that under s. 213(3) of the NLC the oral agreement was not binding on the plaintiff. In respect of prior notice of the existing tenancy his Lordship said at p. 189 as follows:

> ... section 213(3) does not seem to me to impliedly exclude this question of knowledge or notice actual or constructive, because it says that "unless, prior to the date on which the dealing referred to, the tenancy had become protected by an endorsement on the register document of title" See also *Eng Mee Yong v. Letchumanan* [1979] 2 MLJ 211 at page 214 column B, on equitable doctrine of notice.
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> I also agree with the submission of the Plaintiff's Counsel relating to equitable notice as found in the English law. This principle has no application in land dealings in Malaysia. By section 6 of the Civil Law Ordinance 1956:
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> > the law of England relating to the tenure or conveyance or assurance of succession to any immovable property or any estate, right or interest therein
>
> is expressly excluded from the general reception of English common law and rules of equity as part of the law of Malaysia. See *T. Damodaran v. Choe Kuan Him* [1979] 2 MLJ 267 at p. 270 column D.

Whilst the decision in *Than Kok Leong (supra)* was given on 21 July 1980 it was only reported in 1983. However in July 1984 the Privy Council in *United Malayan Banking Corporation Bhd & Anor v. Pemungut Hasil Tanah, Kota Tinggi* [1984] 2 CLJ 146; ([1984] 1 CLJ (Rep) 51) PC confirmed the views of Mohamed Dzaiddin JC (as the Chief Justice then was) when it said at p. 149 (p. 56) as follows:

> The National Land Code is a complete and comprehensive code of law governing the tenure of land in Malaysia and the incidents of it as well as other important matters affecting land and there is no room for the importation of any rules of English Law in that field except in so far as the Code itself may expressly provide for this.

I agree and accept this proposition of the law that even if the plaintiff had actual or constructive notice of (1) the sale of the said premises from the previous ground tenant to the present defendant and (2) of the consent given by the plaintiff's predecessor-in-title the binding provision is s. 316(1) of the NLC. In this case the present defendant had every right to have sought the endorsement of his claim on the register document of title to the said land. In fact the intention of s. 316(1) is specifically and expressly stated in that section itself. It is "for the purpose of protecting his rights thereunder against subsequent dealings". In fact this intention is also repeated in s. 213(3) of the NLC wherein it says "... unless ... the tenancy has become protected by an endorsement on the register document of title ..."

It is also noteworthy to consider the decision of the then Supreme Court in *Hotel Ambassador (M) Sdn. Bhd. v. Sea Power (M) Sdn. Bhd.* [1991] 1 CLJ 656; [1991] 1 CLJ (Rep) 174 SC. In that case the appellants were the lessees of a property on which they ran the business of a hotel. The lease was for ten years with an option for renewal. At the expiry of the lease, the option for extension was never exercised but the appellants continued occupation of the said property. Subsequently, the property was sold to the respondents by public auction after a foreclosure action by the chargee of the property. The certificate of sale was duly issued by the senior assistant registrar of the High Court. The respondents thereupon applied for possession of the property under O. 89 of the Rules of the High Court 1980 but this application was dismissed in the High Court. The appeal against that order was abandoned.

The appellants later applied for a declaration that they were the lawful tenants of the said property and for a restraining order against the respondents. The restraining order was granted. The respondents then applied to set aside the restraining order and after a hearing *inter partes*, the learned judge of the High Court discharged the order and also made an order for vacant possession of the property to be given to the respondents. In dismissing the appeal the Supreme Court stated very emphatically that s. 267(2) of the NLC 1965 provides that, notwithstanding that it was granted with the consent in writing of the chargee no tenancy exempt from registration granted by the chargor after the date of registration of the charge shall be binding on the purchaser unless prior to the date of registration of the certificate of sale, the tenancy had become protected by an endorsement on the register document of title. The highest court of the land has confirmed the implication of s. 213(1)(a) of the NLC which defines a "tenancy exempt from registration".

Mr. Thayalan for the defendant relied heavily upon the decision of the Federal Court in *Mok Deng Chee v. Yap See Hoi & Ors* [1981] CLJ 124; [1981] CLJ (Rep) 69 FC. In this case the then Federal Court was not given the benefit of an address in respect of s. 6 of the Civil Law Act 1956. The Federal Court merely relied on various English decisions and incorporated the English law of equitable estoppel into our system by holding that because the landowner by his conduct having raised an expectation of his tenant that the latter would be allowed to stay on and thereby inducing him to spend money in respect of the tenancy, the said landlord ought therefore to be prevented from taking any action contrary to that expectation.

Since this case did not consider the very relevant provision of s. 6 of the Civil Law Act 1956 which excludes the application of equitable principles to land matters I shall not follow this decision. Besides this case was decided much earlier to the cases I have earlier relied on and in none of these cases was the decision of *Mok Deng Chee* referred to.

Finally the question as to whether summary proceedings is apt in this case was also raised by the defendant. In *Bank Negara Malaysia v. Mohamed Ismail & Ors* [1992] 1 CLJ 627; [1992] 1 CLJ (Rep) 14 SC the then Supreme Court held that where the issue raised is solely a question of law or where the facts are clear and undisputed the court should exercise its duty under O. 14. Since Mr. Thayalan had agreed with all the facts as put forward by the plaintiff and since no facts were in dispute the only issues the court had to decide were issues of law relating to the applicability of ss. 213 and 316 of the NLC. I therefore held that O. 14 was the proper mode of disposing of this case.

I, therefore, granted the plaintiff an order in terms of (a), (b) and (e).

Since the plaintiff magnanimously waived damages I made no such order.